

HOUSE BILL REPORT

HB 1092

As Reported by House Committee On:

Public Safety
Appropriations

Title: An act relating to requiring reporting, collecting, and publishing information regarding law enforcement interactions with the communities they serve.

Brief Description: Concerning law enforcement data collection.

Sponsors: Representatives Lovick, Goodman, Berry, Leavitt, Fitzgibbon, Johnson, J., Slatter, Wylie, Bateman, Ramos, Berg, Sells, Dolan, Tharinger, Simmons, Ramel, Ortiz-Self, Senn, Peterson, Gregerson, Ryu, Bronoske, Valdez, Callan, Kloba, Hackney, Chopp, Duerr, Ormsby, Taylor, Lekanoff, Frame, Santos, Macri, Orwall, Davis, Pollet, Bergquist and Harris-Talley; by request of Attorney General.

Brief History:

Committee Activity:

Public Safety: 1/14/21, 1/19/21 [DPS];
Appropriations: 2/1/21, 2/4/21 [DP2S(w/o sub PS)].

Brief Summary of Second Substitute Bill

- Requires the Washington State University (WSU) to establish a program to collect, report, and publish information on law enforcement's use of force and other interactions with and incidents involving the public.
- Requires all general and limited authority law enforcement agencies to participate in the program by collecting and reporting certain information to the WSU.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Davis,

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Griffey, Hackney, Lovick, Orwall, Ramos and Simmons.

Minority Report: Do not pass. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Graham.

Staff: Kelly Leonard (786-7147).

Background:

Use of Force by Law Enforcement Officers. Law enforcement officers may exercise force to exercise an arrest and protect themselves and others from harm, subject to the limitations of the Federal and State Constitutions. Any use of force must be reasonable under the circumstances. "Deadly force" refers to the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury. Law enforcement officers may use deadly force in limited circumstances, including, for example, when necessarily used to apprehend or arrest a person who poses a threat of serious physical harm to the officer or others. The officer must have a good faith belief that the act is justifiable according to certain statutory requirements.

Vehicular Pursuits. An officer who has authority to make an arrest may proceed in fresh pursuit of a person who is reasonably believed to have committed a violation of traffic or criminal laws or for whom the officer has an arrest warrant. When proceeding in pursuit of a suspect, the officer may violate certain rules of the road, including, for example, stop signals, speed limits, and parking restrictions. State law requires the Criminal Justice Training Commission (CJTC) to maintain a model policy on vehicular pursuits. The policy must include procedures for:

- supervisory control of the pursuit, if available;
- designating the primary pursuit vehicle and determining the total number of vehicles allowed to participate in the pursuit at one time;
- coordinating operations with other jurisdictions; and
- determining when the interests of public safety and effective law enforcement justify a vehicular pursuit and when a vehicular pursuit should not be initiated or should be terminated.

All state, county, and municipal law enforcement agencies are required to adopt and implement vehicular pursuit policies. Though they are not required to adopt the model policy maintained by the CJTC, any adopted policy must include the same elements outlined above. All officers must receive training on how to conduct vehicular pursuits.

Definitions. "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general. This includes, for example, county sheriffs, municipal police

departments, the Washington State Patrol, and the Department of Fish and Wildlife. "Limited authority law enforcement agency" means any agency, political subdivision, or unit of local government, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas. This includes, for example, the Department of Corrections, Department of Natural Resources, Department of Social and Health Services, Gambling Commission, and Liquor and Cannabis Board.

Summary of Substitute Bill:

Subject to an appropriation, the Washington State University (WSU) must establish and maintain a program to collect, report, and publish information on law enforcement's use of force and other interactions with and incidents involving the public. All general authority and limited authority law enforcement agencies are required to participate in the program.

By November 1, 2021, the WSU must submit to the Office of the Attorney General (AGO) a policy for statewide implementation of the program. The policy must contain certain elements, including: defining the data to be collected; establishing procedures and deadlines for law enforcement agencies to collect and report the data; establishing procedures for the public to report data to the WSU directly; establishing reporting, analyzing, and publishing practices and procedures for the WSU meeting certain minimum requirements; and establishing a plan for phased implementation, if necessary. The AGO must approve or reject the policy in consideration of the interests of the public in accessing information in a transparent and expedient manner as well as the institutional operations and demands of law enforcement agencies and the WSU. If the AGO rejects the policy, the WSU must submit revisions for approval.

The policy developed by the WSU and approved by the AGO must specify the types of incidents and interactions for which data must be collected. However, the program must, at a minimum, collect and report data on use-of-force incidents and vehicular pursuits. For use-of-force incidents, all general and limited authority law enforcement agencies must report to the program when a fatality, great bodily harm, or substantial bodily harm occurs in connection with use of force by a law enforcement officer, or when a law enforcement officer:

- discharges a firearm at or in the direction of a person;
- points a firearm at a person;
- uses a chokehold or vascular neck restraint;
- uses an electronic control weapon including, but not limited to, a taser, against a person;
- uses oleoresin capsicum spray against a person;
- discharges a less-lethal shotgun or other impact munitions at or in the direction of a person;

- strikes a person using an impact weapon or instrument including, but not limited to, a club, baton, or flashlight;
- uses any part of their body to physically strike a person including, but not limited to, punching, kicking, slapping, or using closed fists or feet;
- uses a vehicle to intentionally strike a person or vehicle; or
- either deploys a canine by releasing it from the physical control of the law enforcement officer, if the canine bites a person, or both.

Reports submitted by agencies must include certain specified details pertaining to each incident, including details regarding the incident, officer, subject, and agency conducting the investigation. Regardless of any phased implementation plan, collection and reporting on these incidents must commence by July 1, 2022.

The WSU may contract with public and private institutions of higher education and other organizations and businesses with significant expertise and experience in collecting, tracking, and reporting data on law enforcement's interactions with the public. The WSU may also establish an advisory group of public and private institutions and entities with experience in data collection and research, as well as experts in law enforcement.

Substitute Bill Compared to Original Bill:

The substitute bill removes the deadlines and procedures provided in the underlying bill, and instead requires the WSU to submit a policy for approval to the AGO by November 1, 2021, and requires the policy to contain certain elements, including: defining the data to be collected; establishing procedures and deadlines for law enforcement agencies to collect and report the data; establishing procedures for the public to report data to the WSU directly; establishing reporting, analyzing, and publishing practices and procedures for the WSU; and establishing a plan for phased implementation, if necessary. The AGO must approve or reject the policy in consideration of the interests of the public in accessing information in a transparent and expedient manner as well as the institutional operations and demands of law enforcement agencies and the WSU. The WSU must submit a revised policy if the AGO rejects it.

The substitute bill requires data collection and reporting on certain use-of-force incidents to commence no later than July 1, 2022, regardless of any phased implementation plan.

The requirement to collect and report data on vehicular pursuits is added. The requirement to collect and report data on tort payouts is removed.

The substitute bill provides that the WSU may contract with public and private institutions of higher education and other organizations and businesses with significant expertise and experience in collecting, tracking, and reporting data on law enforcement's interactions with the public. The WSU may also establish an advisory group of public and private institutions and entities with experience in data collection and research, as well as experts in

law enforcement.

The emergency clause and other effective dates are removed, and instead the substitute bill provides that the bill takes effect 90 days after adjournment of the session in which the bill is passed.

Appropriation: None.

Fiscal Note: Requested on January 7, 2021.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Citizens should not only be safe and secure in their homes and communities, but they should also feel safe and secure in their homes and communities. The consequences of using of force weighs heavy on law enforcement officers, and everyone wants to make it home safe at the end of the day. There is a shared interest in better understanding use-of-force practices. This bill is about facts, not about wishes or inclinations. The state needs facts in order to work towards building transparency and trust with the public.

The state does not have a current process for collecting or reporting information on use-of-force incidents or other interactions between law enforcement and the public. The public, policymakers, and law enforcement agencies do not have a source upon which they can rely for this information. The AGO attempted to conduct a review of Initiative-940 compliance issues, and it ultimately had to rely on media reports for any data on this issue. Going forward, collecting, reporting, and analyzing this information is foundational for developing effective agency practices and making public policy decisions.

In the absence of data, stakeholders will continue to be divided and continue to talk past one another. For that reason, there is broad agreement amongst stakeholders that the state must establish standardized data collection and reporting requirements. Law enforcement supports data collection in this field. It is the first step towards restoring trust and transparency. The consortium and experts identified in the bill are critical to making this program feasible and reliable. Accurate and relevant data is essential to understanding what policies and practices work and do not work. The statewide program established through the bill will promote transparency, accountability, and fairness, which will contribute to building stronger community and police relations.

(Opposed) While standardized data collection requirements should be implemented, the bill has some issues. The bill should not require data collection on tort payouts. In addition,

there may be significant costs for law enforcement agencies to implement the bill.

Washington has the lowest number of officers per capita in the nation. There are very few people to do these important jobs, and there should be sensitivity as to how much time it will take officers to collect the data required under the bill. While all agencies should be required to participate in the national data collection program managed by the Federal Bureau of Investigation, any additional data required by the WSU should be collected by extracting data from incident reports. This will limit the impact to agencies. All of the fiscal impact from this program should be on the state.

(Other) The proposed substitute bill resolves many concerns with the underlying bill. Law enforcement agencies support data collection and reporting in order to improve policy decisions and management within individual agencies. Technology is helping agencies collect this information with greater ease. Further, data collection is part of officers' jobs in order to be accountable to the public. Though agencies will need to work with the WSU to determine the best way to collect the data. The proposed substitute bill and the underlying bill correctly require all agencies to participate in this program. It should not be optional.

The data elements identified in the bill should be a starting point, but the program should work towards expanding the types of incidents and interactions for which data is collected.

Persons Testifying: (In support) Representative Lovick, prime sponsor; Spike Unruh, Washington State Patrol Troopers Association; Yasmin Trudeau and Kelly Richburg, Office of the Attorney General; and James Schrimpsher, Washington State Fraternal Order of Police.

(Opposed) James McMahan, Washington Association of Sheriffs & Police Chiefs.

(Other) Jeff DeVere, Washington Council of Police and Sheriffs.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Public Safety. Signed by 30 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Harris, Hoff, Jacobsen, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

Minority Report: Without recommendation. Signed by 3 members: Representatives MacEwen, Assistant Ranking Minority Member; Dye and Schmick.

Staff: Yvonne Walker (786-7841).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Public Safety:

A null and void clause was added, making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available. New fiscal note requested on January 19, 2021.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) Although there is support for this bill, there are several sections that should be amended. For example, provisions should be added that: (1) ensure the advisory committee is mandatory and that individuals from the community are involved; (2) address the collection of data on the cost of civil liability; (3) earmark funding for a study that identifies categories of costs such as public defense against civil suits, settlements when cases do not go to trial, and the tort payouts when suits are successful; (4) identify the sources of funding and the key barriers to collecting data; and (5) require that a report be made available to the public. In addition, another section should be added for transparency and accountability purposes that requires the data collection contract be publicly bid instead of being administratively assigned to the Washington State University.

This legislation is foundational and necessary to provide transparency in getting a full picture of what law enforcement does each day. There is no single source of information where a person can obtain information about the use of force or any other information related to law enforcement interactions with the public on a state-wide scale. This information is needed to determine what policies do and do not work. Out of all the law enforcement reform bills, there is no subject more necessary or more deserving of the state's commitment of funds than a bill mandating a comprehensive comparable collection of data on how Washington provides law enforcement and public safety services.

(Opposed) None.

(Other) There is a strong correlation between good comprehensive data and informed decisions that can benefit the state as well as each of the local law enforcement agencies. However, it is recommended that language be added to the bill to clarify that a law

enforcement agency that submits relevant incidents to the Washington State University has satisfied its reporting requirements. Not only will simply requiring law enforcement agencies to submit incident reports reduce the cost to agencies but also increase the uniformity and objectivity of that data.

Persons Testifying: (In support) Martina Morris, Next Steps Washington; Yasmin Trudeau, Office of the Attorney General; Michael Transue, Washington Fraternal Order of Police; and Teresa Taylor, Washington Council of Police & Sheriffs.

(Other) James McMahan, Washington Association of Sheriffs & Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.